

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DAVID S. YARNALL,)
)
Plaintiff,) CONSOLIDATED
)
v.) CIV. No.: 05-527-SLR
)
CPL. ANTHONY MENDEZ, DELAWARE) CIV. NO.: 06-501-SLR
STATE POLICE - TROOP 7, PTLM)
LOWE, UNKNOWN OFFICERS WHO) CIV. NO.: 06-529-SLR
RESPONDED TO SCENE OF)
MILLSBORO POLICE, AND PFC)
BUCHERT,)
)
Defendants.)

**ANSWER, AFFIRMATIVE DEFENSES AND CROSS-CLAIM OF DEFENDANT
PFC BUCHERT TO COMPLAINT FILED IN C.A. NO. 06-529-SLR**

The numbered paragraphs in this Answer correspond to the numbered paragraphs in the Complaint. Unless specifically admitted or otherwise qualified, defendant PFC Buchert generally denies the allegations in Plaintiff's Complaint.

I.A. Admitted that plaintiff filed another lawsuit in this Court at C.A. 05-527-SLR.

II. Since the Complaint states "N/A" no answer is required.

III. Admitted that defendant PFC Buchert was employed as a police officer at the Millsboro Police Department on May 11, 2005.

IV. Denied that excessive force was used against plaintiff. Denied that PFC Buchert failed to prevent the use of excessive force by Millsboro Police Officer Lowe. Denied that plaintiff

was "attacked" by Lowe. Denied that plaintiff was "calm on the hood." Denied that plaintiff was harassed, threatened or hit in the back of the neck. Denied that PFC Buchert's police report "doesn't match with" the Delaware State Police Video.

V. This is a prayer for relief to which no answer is required.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state claims upon which relief can be granted.
2. Defendant PFC Buchert is entitled to qualified immunity. Harlow v. Fitzgerald, 57 U.S.C. 800 (1982).
3. No action or conduct of defendant violated any clearly established statutory or constitutional right of which a reasonable person would have known.
4. Plaintiff's claims are barred by the County and Municipal Tort Claims Act, 10 Del. C. § 4011 et. seq.
5. Plaintiff was negligent in a manner which proximately caused his alleged injuries. Plaintiff was negligent in that he was intoxicated and/or under the influence of drugs and violently resisted police officers' lawful commands.
6. The actions of plaintiff were superseding and/or intervening causes of his alleged injuries.

CROSS-CLAIM FOR INDEMNIFICATION AND CONTRIBUTION

7. Defendant PFC Buchert denies that he is liable to plaintiff in any respect. However, in the event that answering defendant is held liable to the plaintiff, then he cross-claims against co-defendants Cpl. Anthony Mendez and Delaware State Police Troop 7 for indemnification and contribution pursuant to the provisions of Federal Law and the Delaware Uniform Contribution Among Joint Tortfeasors Law, 10 Del. C. Ch. 63.

WHEREFORE, Defendant PFC Buchert requests that the Complaint be dismissed, with costs and attorney fees assessed against plaintiff.

AKIN & HERRON, P.A.

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Dated: December 4, 2006

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